

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

MOOG INC.,

Plaintiff,

v.

SKYRYSE, INC., ROBERT ALIN  
PILKINGTON, MISOOK KIM, and DOES  
NOS. 1-50.

Defendants.

Civil Action No. 1:22-cv-00187-LJV-JJM

**SKYRYSE’S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A  
SUPPLEMENTAL BRIEF**

Defendant Skyryse, Inc. respectfully submits this motion for leave to submit a supplemental brief in connection with its pending Motion to Dismiss or, Alternatively, to Transfer Venue (ECF No. 48, amended at ECF No. 117), which motion was fully briefed as of June 3, 2022. (ECF Nos. 48, 62, 117, 133.) Recent developments, which neither Skyryse nor the Court were aware of during the prior briefing, are likely to impact the Court’s resolution of Skyryse’s motion. Skyryse thus respectfully requests leave to submit the accompanying supplemental brief.

In particular, as counsel for Moog has disclosed to this Court, the United States Attorney’s Office for the Central District of California, following a referral from Moog, opened an investigation premised on the same alleged conduct in California that underlies Moog’s claims. This confirms that a substantial part of the alleged events giving rise to Moog’s claim occurred in California, not in the Western District of New York, and the Government’s investigation (and any legal proceedings that may arise from it) only deepens the parties’ existing connections to the Central District of California. That investigation already is impacting this litigation. For example, on August

3, 2022, the individual defendants moved to stay this action pending resolution of the criminal investigation, so they can ascertain whether and how to assert their Fifth Amendment rights. (ECF No. 214.) Additionally, in the limited discovery that has occurred so far, Moog has subpoenaed thirteen non-parties in California for information based in California (and no one from New York). This underscores this action's substantial connection to California, and the potential involvement of third parties whom this Court cannot compel to testify at trial. Moog also taken litigation positions over the past few months that undermine its claim that venue is proper and convenient in New York, as explained more fully in the accompanying supplemental brief.

At the last hearing on August 4, 2022, the Court raised with the parties the prospect of supplementing their briefing regarding venue in light of the Government's ongoing investigation in California and any implications it may have on Skyrise's pending motion to dismiss or transfer venue. (*See* Ex. B, Aug. 4 Tr. 29:12-30:7.) Skyrise accordingly requests leave to file a short supplemental brief explaining how this and other recent developments support Skyrise's pending Motion to Dismiss or, Alternatively, to Transfer Venue. Courts regularly grant leave to supplement prior briefing, particularly when new developments influence pending motions before the Court. *See, e.g., JetBlue Airways Corp. v. Helferich Pat. Licensing, LLC*, 960 F. Supp. 2d 383, 390 (E.D.N.Y. 2013) (allowing "supplemental briefs on the issue of transfer of jurisdiction and venue"); *United States v. Humphrey*, No. 10-CR-00025A SR, 2013 WL 3244333, at \*13 (W.D.N.Y. June 26, 2013), *aff'd*, No. 10-CR-25, 2014 WL 1836602 (W.D.N.Y. May 8, 2014) (granting permission to supplement previously-filed motions based on additional discovery taken since motions were filed). Accordingly, leave is in order here.

For the foregoing reasons, Skyrise respectfully seeks the Court's leave to file the supplemental brief attached as **Exhibit A** in support of its Motion to Dismiss or, Alternatively, to Transfer Venue.

Dated: August 9, 2022

/s/ Gabriel S. Gross

**LATHAM & WATKINS LLP**

Douglas E. Lumish (Admitted *Pro Hac Vice*)  
Gabriel S. Gross  
Arman Zahoory (Admitted *Pro Hac Vice*)  
Ryan Banks (Admitted *Pro Hac Vice*)  
140 Scott Drive  
Menlo Park, California 94025  
Telephone: (650) 328-4600  
Facsimile: (650) 463-2600  
Email: doug.lumish@lw.com  
gabe.gross@lw.com  
arman.zahoory@lw.com  
ryan.banks@lw.com

Joseph H. Lee (Admitted *Pro Hac Vice*)  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, California 92626  
Telephone: (714) 540-1235  
Facsimile: (714) 755-8290  
Email: joseph.lee@lw.com

Julianne C. Osborne (Admitted *Pro Hac Vice*)  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111  
Telephone: (415) 391-0600  
Facsimile: (415) 395-8095  
Email: julianne.osborne@lw.com

**HARRIS BEACH PLLC**

Terrance P. Flynn  
726 Exchange Street, Suite 1000  
Buffalo, New York 14210  
Telephone: (716) 200-5050  
Email: tflynn@harrisbeach.com

Counsel for Defendant Skyrise, Inc.